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Tuesday
April 17, 1979

Part VII

Department of the Interior

Fish and Wildlife Service

Listing of the Bolson Tortoise as an Endangered Species

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Listing of the Bolson Tortoise as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service hereby determines the Bolson tortoise (*Gopherus flavomarginatus*) to be an Endangered species. This action is being taken because the tortoise is under heavy pressure from human predation, habitat modification, competition from grazing stock, and collection of individuals. This action will provide additional protection to this species, listed now on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Bolson tortoise is known from the states of Chihuahua, Coahuila, and Durango in Mexico.

DATES: This rule becomes effective on May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. O'Connor, Acting Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343-4646).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1978, the Fish and Wildlife Service was petitioned by Dr. David Morafka of California State University—Dominguez Hills to list the Bolson tortoise, *Gopherus flavomarginatus*, as an Endangered species under provisions of the Endangered Species Act of 1973. Included with the petition was a report entitled "The Ecology and Conservation of the Bolson Tortoise, *Gopherus flavomarginatus*" in which Dr. Morafka reviewed the biology and status of the species throughout its range. On June 29, 1978, the Director of the Service notified Dr. Morafka that he had supplied sufficient information to warrant serious consideration for listing under provisions of the Act.

On September 26, 1978, the Service published a proposed rulemaking in the **Federal Register** (43 FR 43692–43693) advising that sufficient evidence was on file to support a determination that the Bolson tortoise was an Endangered species pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* That proposal summarized the factors thought to be contributing to the likelihood that this tortoise could become extinct within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections and factual information from any interested person.

Those factors affecting the status of this species were published in the proposal to list the Bolson tortoise and are reprinted below:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—Habitat destruction is accelerating throughout the range of the Bolson tortoise. Plowing and irrigation of fields for cotton, beans, corn, and melons has apparently contributed to the extirpation of the species in certain areas, such as the region west of Mexican Highway 49 and around Tlahualilo in Durango. As Mexico's resettlement program continues, more and more of the tortoise's habitat will likely be converted to agricultural and grazing uses. The continued existence of the tortoise in the vicinity of such practices is highly unlikely.

Habitat destruction also occurs through overgrazing by cattle and goats. Goat herds have long moved across the foothills of the tortoise country. Water supplies have been increased by underground drilling and as a result cattle are rapidly increasing in density in these arid grasslands. Some areas are now beginning to show the marked effects of overgrazing, usually indicated in this type of habitat by the erosion of topsoil and invasion of mesquite and creosote shrub. Cattle and goats destroy browse needed by the tortoises as well as burrows and cover sites.

2. *Overutilization for commercial, sporting or educational purposes.*—In the past, Bolson tortoises have been in demand for private collections, zoos, and museums in the United States and elsewhere; occasional shipments have reached dealers in El Paso. The extent of this collection is presently unknown in light of the tortoise's status as an Appendix II species on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, Mexico is not a party to the Convention and it is likely that some trade is continuing. As recently as January, 1978, Americans have been reported in Ceballos, Durango buying specimens.

3. *Disease or predation.*—Natural predation is probably only a minor factor contributing to the status of the Bolson tortoise. However, human predation may be the main cause for the extirpation or reduction in numbers of this tortoise over large areas of its range. This species is used extensively for food by the local population and although much of the area inhabited by tortoises is only sparsely settled, the tortoise populations are often eliminated as far away as 10 kilometers from the nearest habitation. As settlement increases, continued predation on the tortoises will accelerate.

4. *The inadequacy of existing regulatory mechanisms.*—Although permits are required by Mexico for the scientific collection of this species, no active resident personnel are present to enforce whatever legal protection may exist. There is no legal protection for the tortoise from local consumption. According to Dr. Morafka's report, the enforcement of existing trade restrictions is also lacking.

5. *Other natural or man-made factors affecting its continued existence.*—Not applicable.

The government of Mexico was notified of this proposal and asked to submit any comments, reports, published material, or other information pertinent to the proposal. No official comments were received from any Mexican officials or government agencies.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife and Plants.

In the September 26, 1978, **Federal Register** proposed rulemaking (43 FR 43692–43693) and associated September 27, 1978, Press Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period September 26, 1978, to January 3, 1979, were considered.

A total of 17 comments were received. Ten of these represented private individuals or scientists while the remainder represented organizations. The organizations submitting comments were: Desert Tortoise Council (Dr. Glenn R. Stewart), Defenders of Wildlife (Laura Tangley), Environmental Defense Fund (Sherrard Coleman), Animal Protection Institute (Jane Risk), Sierra Club (Barbara Munves), San Diego Turtle and Tortoise Society (Vern Kirchman) and Instituto de Ecologia of Sede Museo de Historia Natural de la

Ciudad de Mexico (Biol. Gustavo Aguirre L.). All those who responded to the proposal endorsed federal protection and Endangered status. No new information was added to that contained in the proposal although several individuals made reference to Dr. David Morafka's report on this species.

After a thorough review and consideration of all the information available, the Director has determined that (1) the Bolson tortoise is threatened with becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act, as specified in the proposal of September 26, 1978 (43 FR 43692–43693) and discussed above, and (2) listing the species as Endangered will provide it with necessary protections to ensure its survival.

Effect of the Rulemaking

The effects of this rulemaking and this determination include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered and Threatened species. The regulations referred to above, which pertain to Endangered species, are found at § 17.21 of Title 50 and are summarized below.

With respect to the Bolson tortoise, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, will now apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the **Federal Register** of September 26, 1975 (40 FR 44412) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service has reviewed the status of the Bolson tortoise to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon Appendix I of the Convention. The Service believes that such a change is warranted and proposed such in the **Federal Register** of November 27, 1978 (42 FR 55314–55319).

Endangered Species Act Amendments of 1978

The Endangered Species Act Amendments of 1978 specify that the following be added at the end of subsection 4(a)(1) of the Endangered Species Act of 1978:

At the time any such regulation (any proposal to determine a species to be an Endangered or Threatened species) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Since the species under consideration in this rulemaking is foreign, this amendment does not apply.

The Endangered Species Act Amendments of 1978 further state the following:

(B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

(i) Shall publish general notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation

(I) In the **Federal Register**, and

(II) If the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat;

(ii) Shall offer for publication in appropriate scientific journals the substance of the **Federal Register** notice referred to in clause (i)(I);

(iii) Shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and

(iv) Shall—

(I) If the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefore is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

(II) If the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

In the case of the Bolson tortoise herein considered, Section 4(B)(i)(I) above has been complied with. In addition, the following scientific journals were notified of the proposal and offered a copy of the **Federal Register** document for either publication or distribution to scientists: Copeia, Herpetologica, Herpetological Review, and the Journal of Herpetology. Since this species is foreign and no critical habitat has been proposed, none of the other amended subsections of this Section are applicable. Therefore, the proposal as published on September 26, 1978, does not need to be supplemented to comply with the Endangered Species Act Amendments of 1978. Accordingly, the Service is proceeding at this time with a final rulemaking to determine this species as Endangered pursuant to the Endangered Species Act of 1973.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia. It addresses this action as it involves the Bolson tortoise. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (703/235–1975).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the Bolson tortoise to the list, alphabetically, under "Reptiles" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species							
Common Name	Scientific Name	Historic Range	Population Where Endangered or Threatened	Status	When Listed	Critical Habitat	Special Rules
REPTILES							
Tortoise, Bolson	*Gopherus flavomarginatus*	Mexico	Entire	E		N/A	N/A

NOTE.—The Department of the Interior has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Dated: April 9, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-11953 Filed 4-16-79; 8:45 am]

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This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

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DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing Apr. 12, 1979

Announcement

The Office of the Federal Register is planning to publish periodically a list of libraries in the United States where the *Federal Register* and *Code of Federal Regulations* can be examined by the public free of charge.

The purpose of publishing this list is to spotlight the availability to the public of these publications. Any library that maintains these publications and makes them available to the public and wishes to be included in this list should write to the Director of the Federal Register, National Archives and Records Service, GSA, Washington, D.C. 20408, or phone 202-523-5240, giving name and address of the library.

The first such list will be published on July 2, 1979—will be updated in the issue for September 4, and will be published annually thereafter unless public interest requires more frequent publication.